



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

David C. Hollister
Director

Determination No. 7 – Private Sector Internal Telecommunication Systems Using Public Right-of-Way **October 24, 2005**

Purpose

To determine whether certain private sector entities using public rights-of-way for internal telecommunication systems are required to meet the permit, mapping, and maintenance fee provisions of Sections 2(k), 5, 6, 8, and 15 of the METRO Act.

Analysis

The METRO Authority is aware that some private sector entities have constructed private telecommunication systems for which they receive no external compensation; and are solely used for their own internal purposes. However, some of these private systems have facilities in the public rights-of-way of municipalities.

MCL §§ 484.3108(18)-(20) of the METRO Act states that an educational institution, an electric, gas utility, or an affiliate of a utility, or an electric transmission provider, or a state, county, municipality owned utility or an affiliate are "...NOT required to obtain a permit, pay the fees and charges, or fulfill the mapping requirements required under this act for facilities located in the public rights-of-way..." used solely for their internal purposes (emphasis added). Thusly, many private sector entities that have telecommunications facilities in the public right-of-way do not fall within any of these three categories for the permit fees and other requirements to be waived.

MCL § 484.3102(i) defines the public right-of-ways "...the area on, below, or above a public roadway, highway, street, alley, easement, or waterway. Public right-of-way does not include federal, state, or private right-of-way." The public rights-of-way that private sector entities use are NOT private to be exempted from this definition.

Also, MCL § 484.3105(1) of the METRO Act states that "...a provider using or seeking to use public rights-of-way in a metropolitan area for its telecommunication facilities SHALL obtain a permit under Section 15 from the municipality AND pay all fees required under this act" (emphasis added). Private sector entities using public rights-of-way for telecommunication services do not fall under any of the three categories that exempt entities from the fee payments and mapping requirements of the METRO Act.

METRO Authority Determination

Sections 8(18), 8(19), and 8(20) of the METRO Act provide exemptions to the fee, permit, and mapping requirements to educational and privately/publicly owned utilities if

their telecommunication services are not provided or leased for compensation to other entities.

The METRO Act has no such exemption for private sector companies that have telecommunication facilities in the public rights-of-way, even if they do not lease or provide telecommunication services to other entities. Thusly, private sector companies are subject to the permit application, maintenance fee, and mapping requirements of the METRO Act when they use/have telecommunication facilities in public rights-of-way.

A decision or assessment of the METRO Authority is subject to a de novo review by the Michigan Public Service Commission upon the request of an interested person pursuant to Section 17 of the METRO Act.